

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO MERINO,  
  
Petitioner,  
  
v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS,  
  
Respondent.

No. 2:21-cv-2204-KJM-EFB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 10, 2021, the magistrate judge filed findings and recommendations, which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within fourteen days. The court liberally construes petitioner's December 21, 2021 filing as objections to the findings and recommendations.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
2 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the  
3 findings and recommendations to be supported by the record and by proper analysis. The court  
4 writes separately only to address Merino's objections. He asks why he was permitted to assert  
5 similar medical claims in a different habeas petition, citing a case bearing number "21HC00104,"  
6 but not in this action. Merino has filed a number of cases in this court, but none have that  
7 number:

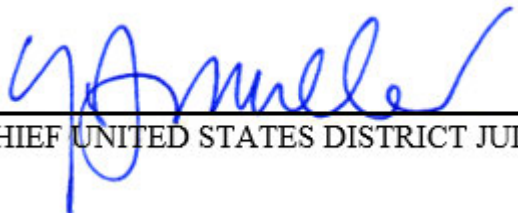
- 8 • In case No. 2:21-cv-02112-JAM-EFB, the court denied his petition for a writ of habeas  
9 corpus and entered judgment on February 10, 2022.
- 10 • Case No. 2:21-cv-00572-JAM-KJN, a civil rights action under 42 U.S.C. § 1983, remains  
11 pending.
- 12 • Case No. 2:21-cv-00826-KJM-DMC, a civil rights action under 42 U.S.C. § 1983, also  
13 remains pending.

14 Here, the Magistrate Judge correctly explained what types of claims a person may include in a  
15 petition for a writ of habeas corpus and in a civil rights action under 42 U.S.C. § 1983.

16 Accordingly, IT IS HERE BY ORDERED that:

- 17 1. The findings and recommendations filed December 10, 2021, are adopted in full;
- 18 2. Petitioner's application for a writ of habeas corpus is denied without prejudice to filing  
19 his claims in a new action under 42 U.S.C. § 1983;
- 20 3. The Clerk is directed to close the case; and
- 21 4. The court declines to issue a certificate of appealability.

22 DATED: March 18, 2022.

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25 CHIEF UNITED STATES DISTRICT JUDGE  
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